

Message Text

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C O N F I D E N T I A L STATE 277361

LIMDIS FOR ROBERT ROSENSTOCK, US LEGAL DIVISION ONLY

FOLLOWING REPEAT SAN JOSE 5362 ACTION SECSTATE NOV 09.

QUOTE: C O N F I D E N T I A L SAN JOSE 5362

FOR ARA, L, ARA ALSO FOR AMBASSADOR TODMAN

E.O. 11652: GDS

TAGS: PFOR, PGOV, CS

SUBJECT: COMMENTS ON 1976 EXTRADITION LAW

1. SUMMARY: AS A RESULT OF NEW EXTRADITION LEGISLATION, THE MAJOR STUMBLING BLOCKS TO A SUCCESSFUL EXTRADITION HAVE BEEN ELIMINATED. HOWEVER, A NUMBER OF COMPLEX LEGAL QUESTIONS REMAIN, INCLUDING HOW LOCAL SECURITIES FRAUD SUITS WOULD AFFECT A U.S. CASE AND U.S. "POLITICAL MOTIVATION" IN ATTEMPTING TO EXTRADITE VESCO. END SUMMARY.

2. FOLLOWING REMARKS RE 1976 EXTRADITION LAW PASSED BY ASSEMBLY NOV. 2 HAVE BEEN GLEANED FROM LAWYERS, POLITICAL CONTACTS, AND NEWSPAPER COMMENTARY. PRESIDENT ODUBER HAS UNTIL NOV. 15 TO SIGN THE BILL, OR TO VETO IT. (IF HE DOES NEITHER IT STILL BECOMES LAW AFTER THE PRESCRIBED TEN WORKING DAYS.)

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3. THERE IS NOT AS YET UNANIMITY AMONG THE LEARNED OBSERVERS AND COMMENTATORS AS TO PRECISELY HOW SOME KEY SECTIONS OF THE LAW - SECTIONS THAT COULD OFFER SOME PROTECTION TO VESCO - ARE INTERPRETED. ALL AGREE, HOWEVER, THAT THE LAW ELIMINATES

THOSE EGREGIOUS PARTS OF THE 1974 LEGISLATION THAT JUSTLY EARNED IT THE TITLE OF "VESCO LAW." IN THIS REGARD IT SHOULD BE NOTED THAT THE OVERWHELMING MAJORITY OF COSTA RICANS ARE UNANIMOUS IN THEIR VIEW - AND THIS INCLUDES THE MOST RABID ANTI-VESCO PEOPLE IN THE OPPOSITION - THAT THE LAW RELIEVES COSTA RICA OF A NATIONAL EMBARRASSMENT.

4. THE QUESTIONABLE PORTIONS OF THE NEW BILL ARE:

A) ARTICLE 2: "EXTRADITION APPLIES TO... CRIME COMMITTED OUTSIDE OF NATIONAL TERRITORY." THE FEAR REEXPRESSED CONCERNS THE CURRENT JUDICIAL PROCEEDINGS BEING BROUGHT AGAINST VESCO BY A COSTA RICAN CITIZEN FOR SECURITIES FRAUD (SAN JOSE 2752). THE COSTA RICAN CITIZEN (ARCHITECT RECHNITZER) IS HOLDING THAT EVEN THOUGH THE FRAUD OCCURRED OUTSIDE COSTA RICA, IT AFFECTED A COSTA RICAN CITIZEN IN COSTA RICA, WHERE THE ALLEGED PERPETRATORS OF THE FRAUD ARE NOW RESIDING. IF THESE PROCEEDINGS LEAD TO VESCO'S TRIAL, SOME ARGUE, HIS EXTRADITION WOULD BE EFFECTIVELY BLOCKED (DRAGGED OUT JUDICIAL PROCEEDINGS, APPEALS IF THERE IS CONVICTION, ETC.).

B) ACCORDING TO EMBASSY LAWYER ORTIZ, ARTICLE 2 IS LINKED TO ARTICLE 3(C). ORTIZ EXPLAINS THAT IF EXTRADITION IS REQUESTED AFTER INITIATION OF A JUDICIAL PROCEEDING AGAINST THE SAME DEFENDANT FOR A CRIME COMMITTED IN COSTA RICA, EXTRADITION PROCEEDINGS COULD GO ON. HOWEVER, ACCORDING TO THIS SECTION, FINAL GOCR ACTION RE EXTRADITION FOLLOWS THE DECISION OF THE LOCAL COURT IN THE LOCAL CASE. IF THE DEFENDANT IS FOUND NOT GUILTY, EXTRADITION (IF GRANTED BY COSTA RICA) WOULD PROCEED. IF THE DEFENDANT IS FOUND GUILTY, EXTRADITION WOULD BE GRANTED AFTER COMPLETION OF SENTENCE.

IF A CRIME IS COMMITTED LOCALLY (BY THE PERSON WHOSE EXTRADITION IS BEING SOUGHT) FOLLOWING THE SUBMISSION OF THE EXTRADITION REQUEST, THE EXTRADITION PROCEEDING IS NOT AFFECTED. IN SHORT, ORTIZ SAYS, A COSTA RICAN CRIME OR CRIMINAL PROCEDURE MAY DELAY OR SUSPEND THE GRANTING OF EXTRADITION, BUT IT DOES NOT MAKE IT IMPOSSIBLE.

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C) ARTICLE 3B: "EXTRADITION WILL NOT BE GRANTED WHEN APPLICATION FOR EXTRADITION IS BASED ON CRIMES COMMITTED BY PERSONS WHO ARE BEING TRIED OR SANCTIONED IN COSTA RICA FOR THE SAME ACTS (HECHOS)."

AGAIN, THE PREOCCUPATION EXPRESSED BY LAWYERS AND POLITICAL OBSERVERS CONCERNS THE CURRENT JUDICIAL PROCEEDING FOR SECURITIES FRAUD BEING BROUGHT AGAINST VESCO AND HIS ACCOMPLICES BY A COSTA RICAN CITIZEN.

THE QUESTION IS DOUBLE JEOPARDY, WHICH IS PROHIBITED IN COSTA RICA, AND, OF COURSE, NATIONAL SOVEREIGNTY (JULIO SUNOL)
COMMENTS IN LA NACION, NOV 7 RE THIS SUBPARAGRAPH: "IF

SOMEONE IS BEING JUDGED IN COSTA RICA FOR CRIMES COMMITTED IN COSTA RICA, THEN IT IS RATIONAL TO WAIT FOR DECISION TO BE RENDERED AND PUNISHMENT TO BE METED OUT HERE.").

ORTIZ NOTES IN REGARDS TO PARA 3(B) THAT A COSTA RICAN CRIME AND/OR CRIMINAL PROCEDURE MAY IMPEDE AN EXTRADITION ONLY WHEN LATTER IS RELATED TO THE SAME CRIMINAL FACTS OR BEHAVIOR. IF, HOWEVER, THERE IS A CHAIN OF EVENTS FRAGMENTED INTO DIFFERENT CRIMES (PLACE, TIME, PERSONS, I.E. REAL CIRCUMSTANCES AS OPPOSED TO LEGAL CIRCUMSTANCES) THEN IT IS NOT A CASE OF THE SAME CRIMINAL FACTS, AND AN EXTRADITION CASE CAN BE MADE. OF COURSE, ANY "INDULTA" (SUSPENSION OF PUNISHMENT) OR "PERDON" (JUDICIAL PARDON) WHICH IS MADE POSSIBLE BY ARTICLE 3(B) WOULD BE A QUASI-POLITICAL ACT; IF GRANTED, EITHER WOULD PROHIBIT EXTRADITION.

5. ARTICLE 3(G) AND (H) REFER TO POLITICAL CRIMES AND "COMMON CRIME, IF THE OBJECT OF EXTRADITION IS BASED ON POLITICAL REASONS." ALL OBSERVERS FIND IN THESE SUB-SECTIONS A POSSIBLE VESCO DEFENSE. SUBPARAGRAPH (H), OF COURSE, IS THE MOST APPLICABLE; IT IS AMONG ORTIZ' (AND OUR) CHIEF CONCERNS BECAUSE VESCO HAS CONSISTENTLY ALLEGED POLITICAL PERSECUTION.

6. ARTICLE 8B) PERMITS TWO MONTHS OF PREVENTIVE DETENTION WHILE EXTRADITION PROCEEDINGS ARE GOING ON. (ONE LAWYER FRIEND OF EMBASSY CLAIMS THAT THIS IS UNCONSTITUTIONAL). IF EXTRADITION IS GRANTED, THE REQUESTING STATE HAS TWO MORE MONTHS TO REMOVE CONFIDENTIAL

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THE PRISONER FROM COSTA RICA. IF THIS IS NOT DONE, THEN THE PRISONER IS FREE, AND WILL NOT BE SUBJECT TO ANY OTHER EXTRADITION PROCEEDINGS.

7. ARTICLE 6 GIVES COSTA RICAN GOVERNMENT ENTITIES (PUBLIC MINISTRY EXECUTIVE BRANCH, COURTS) THE OPPORTUNITY TO INFORM FOREIGN GOVERNMENTS THAT EXTRADITABLE PERSON IS IN COSTA RICA. AFTER SUCH NOTIFICATION THROUGH THE COSTA RICAN FOREIGN MINISTRY, THE FOREIGN STATE HAS TWO MONTHS TO REQUEST EXTRADITION. SOME LOCAL ENGLISH LANGUAGE PRESS HAS SPECULATED THAT GOCR COULD INFORM USG THAT VESCO IS EXTRADITABLE AND THUS PUT USG ON TWO MONTHS NOTICE TO REQUEST EXTRADITION. EMBASSY VIEWS SUCH DEVELOPMENT AS HIGHLY UNLIKELY DUE TO POLITICAL REALITIES. ORTIZ SHARES THIS VIEW; HE NOTES THAT THIS ARTICLE SIMPLY GIVES GOVERNMENT AN ADDITIONAL WAY TO RID COSTA RICAN OF FOREIGN UNDESIREABLES.

8. AN IMPORTANT FEATURE OF THE 1976 LAW IS PROHIBITION OF EXTRADITION AT TIME PUNISHABLE ACT IS COMMITTED, ACCUSED IS A COSTA RICAN CITIZEN BY BIRTH OR NATURALIZATION (ARTICLE 3A). ORTIZ FEELS THAT THE WAY LAW IS WRITTEN, EXTRADITION OF VESCO AS A NATURALIZED COSTA RICAN (WHICH HE MAY EVENTUALLY BE)

WOULD BE PERMITTED BECAUSE AT TIME PUNISHABLE ACT
COMMITTED VESCO WAS NOT A COSTA RICAN CITIZEN. HE ALSO THINKS
VESCO WOULD CHALLENGE CONSTITUTIONALITY OF THIS ARTICLE IN SUCH
A CASE.

9. COMMENT: AS A RESULT OF THE NEW LEGISLATION, EMBASSY CONTINUES
TO BE OF VIEW THAT MAJOR LEGISLATIVE STUMBLING BLOCKS TO A
SUCCESSFUL VESCO EXTRADITION HAVE BEEN
ELIMINATED. THIS HAS BEEN CONFIRMED BY OUR CONTACTS.
THIS DOES NOT MEAN THAT SUCH AN ATTEMPT WOULD NOT BE
DIFFICULT, NOR DOES IT GUARANTEE US SUCCESS. AS THIS CABLE
POINTS OUT, THERE ARE TRICKY LEGAL PROBLEMS THAT ONLY
LAWYERS CAN ADDRESS, AND THE EXTRADITION PROCESS ITSELF
WILL RESOLVE. THE NEW LEGISLATION, IF IT IS SIGNED BY
ODUBER, WILL PUT MORE FOCUS ON THE U.S. TO DO SOMETHING ABOUT
REQUESTING VESCO'S EXTRADITION. WE ARE ALREADY RECEIVING
QUESTIONS IN THIS REGARD. KILDAY
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